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International Court of Justice

H2716 – 0002

INTERNATIONAL MILITARY TRIBUNAL
NUERNBERG

FINAL PLEA

IN THE

TRIAL AGAINST HERMANN GOERING AND OTHERS

ON BEHALF OF

THE SECRET STATE POLICE (Gestapo)

BY

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NUERNBERG, August 1946

H2716 – 0003

PLEA

FOR THE

GESTAPO

May please the Tribunal

In the case of the proceedings against the individual defendants, the perpetrations of individuals were examined. During the proceedings against the organizations, the question we are concerned with is whether into the legal life of this world a new basic principle is to be introduced. The trial of the Gestapo is given its significance by the conception of the prosecution that the Gestapo had been the most important instrument of power of the Hitler regime.

If I am to defend the Gestapo , it is with the knowledge that a grateful reputation is associated with that name, alas even that horror and fear are radiated by it, and that the waves of hatred close over this name.

The words I am about to speak will be spoken without regard for the opinions of today because I hope to be able to present factual and legal evidence, which will place this High Tribunal in a position:

1) To examine whether by sentencing the organizations a legal development will be introduced which will serve humanity,

2) To establish the truth regarding the Gestapo and by this

3) To liberate innocent men amongst the former members of the Gestapo from an unfortunate fate.

The first two tasks necessitate the answering of the question which represents a preliminary problem connected with the problem of the Gestapo as a whole.

H2716 - 0004

Regarding the preliminary question: The demon like character of the Gestapo and its legal importance for the Trial.

No allegation made by the prosecution has shaken me more than the assertion of the British Chief Prosecutor: that the Germans after six years of Nazi domination and through replacing the Christian ethical teachings by, a God-like admiration for the Fuehrer and the cult of the blood, had become a degenerate nation. If this judgment is just, then the fact of its existence, apart from the circumstances just mentioned, is due to yet another extraordinary factor, - a factor of a character so unusual that history knows it hardly at all: the symptoms of the demon, the demon in Hitler, and the infiltration of the demon's spirit into his regime and into the institutions which he created and employed.

How far Hitler has been a demon has been illustrated by Goethe's words already quoted from "Dichtung und Wahrheit" by my colleague Dr. Dix:

".....he (the demon-man) radiates to mend his power..... all ethical forces, united, cannot defeat it ..... it attracts the masses..... and it is from such remarks that that queer, yet dynamic slogan may have arisen: Nemo contra deum, nisi deus ipse." (No one is powerful against God, except God himself).

The effect of the demonic in the greater world has become clear to you in some of the cases of the individual defendants. The case of the Gestapo will demonstrate to you how an institution of the state has been repeatedly misused by the demonic leaders of that state. But here during the discussion of this preliminary question, yet another interest must arise, the interest of the legal significance of the demonic for this trial. In order to satisfy that interest I shall give another short quotation from Goethe:

H2716 - 0005

"Demonism furnishes one of the moral orders of the world where power interfers although it does not oppose." According to these words, the crucial point is that two powers, parts of the history of this world are decisive. The conflict of whom, as Mr. Justice Jackson said in agreement with the poet Goethe, forms much of the history of humanity." : The world order and the demonism. The juridical of this judgment for our constellation will become clear from the following considerations:

The moral world order was represented by the traditional orders. Opposed to this Hitler, compared with these traditional orders represented the power, which though it was directly opposed to them, nevertheless incapacitated them. In this trial the aim must be to exterminate the remains of this demonic power. Can this and should this be done in accordance with the own and agreed principle of the victorious model world order or can it be done by other methods?

Here we have the first juridical alternative of this trial clearly before us, and this from two of the greatest of the possible perspectives; i.e. in considering the differences between the moral world order and demonism.

Controversial points of view dominate the present attitude with which to view these matters. The Character on one hand relies upon the agreed own principles of the moral world order. It wishes to see judgment passed against the representatives of demonism, the individual defendants and the organizations, by means of an orderly trial, a proper indictment, doing orderly proceedings, with appointed defense counsel and resulting in appropriate findings. On the other hand, the "law of the Charter", even according to the words of Mr. Jackson, is "a new law" with principles which contradict the age old traditional conceptions.

H2716 - 0006

As examples I quote the assumption of collective guilt and the introduction of laws with retroactive effects.

In this way it becomes apparent that the leading thoughts directing this trial are in opposition to each other. It is a common task for all of us to recognize this fact and also through joint efforts on the part of the prosecution the defense, and the Tribunal to arrive at a "concordantia discordantium" and at a coordination of the contradictory opinions.

My leading argument as defense counsel for the Gestapo will have to be devoted, therefore, to the question of how the rules of the Charter are to be understood, according to which the Tribunal can declare during the trial against Goering, Kaltenbrunner or Frick that the Gestapo was a criminal organization.

Once again I will have to come back to the principle consideration. If two powers of historic importance to this world decide the moral world order and demonic developments, then ifthis world is to be cleansed, the moral world order must be victorious. But is, on the other hand the moral world order empowered to conduct the fightagainst its opponent with exceptional rules which differ, themselves, from the basic principles of moral world order? For the sake of the cleanliness of its character and for the sake of its victory moral world order must only fight with weapons of its own categoryc imperative, and that without any compromise. Because it is thus that the opponents of Hitler have fought during the six years of war, relying on the principles of the Atlantic Charter, but is it right that they, the declared representatives of the moral order, should now with the battle of arms at an end, conduct the final struggle **against** demonism with such exceptional rules ? This would be an impossibility. Would it not create the impression that the victorious powers, particularly

H2716 - 0007

in the realm of ethics did not have sufficient confidence in the center of their own being.

As a result for coming generations this maxim would develop "That which is useful to the victor is right." The relentless "Vee victis" would have been raised on a dais, whereas the victors had especially emphasized that they entered the lists for justice, and because of justice, with the principle world "Justice" the signator powers have called the Tribunal into existence by stating in paragraph one of the Charter, " An International Military Tribunal shall be set up in order to pass a just judgment."

They gave the principle word "Justice" emphasis by having Part IV of the Charter, Regulations for a just proceeding, and then they used precaution in that regulations contained in paragraphs 9 and 10 are regulations that may be applied.

That the victors had the wish to have organizations with a reputation such as the Gestapo had declared criminal, who would not understand that. But they took care to make paragraphs nine and ten a regulation which had to be applied. In that way justice became the first premise of the Tribunal. Within its limits, therefore, the regulations that may be applied under paragraphs nine and ten are to be handled as if the entire stipulation had the following wording: "If the Court considers it just it may declare the organizations criminal." In this way the entire decision depends on the concept of justice.

Justice in its purest form is an attribute of God. "God is Just." This sentence has penetrated our consciousness in the sense that God will call to account only him who is really guilty according to the word of Isaiah: "I have called you by name."

In that way since this principle has been assured, much contemplation according to which the organizations and

H2716 - 0008

their members must be dealt with. In the main two things are involved, the members of the organizations who together with their families make up at least fifteen-million people. Now we have to see that this remarkable but terrible proverb proves itself true because of the judgment: "No one can do anything against the moral world order without the moral world order itself."

From this the following conclusion arises for my final plea: That the question put by the Charter to the prosecution, to the defense, and to the Court whether rules of exception are admissible; whether above all the organizations are to be considered collectively capable of guilt, whether laws with retroactive power may be applied, a question that must be answered in the negative.

The counter question whether the world in the future can be protected on the basis of the individual system from demon catastrophes, and whether the Hitler catastrophe did not prove the opposite, I should like to answer to this effect: The protection of the world against such catastrophes is not the question of a system, but rather a question for determined men who rest securely in the moral world order,

7

B) Formal-legal conditions for the Indictment.

I

Admissibility of the Indictment against an organization as such.

The significance and the consequences of the demand voiced by the prosecution to have the organizations declared criminal are of tremendous scope. Reason enough, that defense counsel must examine with the utmost thoroughness, and in every direction possible, whether the bases are present which can carry an indictment of such consequence in the sense of justice under the moral world order.

First of all I should like to establish all emphasis as the first and most important result of my examination. A group (Gemeinschaft) can not be declared guilty. For criminal guilt means the realization of conditions which are punishable not only according to objective but also according to subjective aspects. In other words, a crime can be punishable only, and must have been committed deliberately; according to natural concepts we can speak of intent only with the single individual but not in the case of a group, and if in this connection foreign laws are referred to in the final analysis, this is a confusion with the coinciding will of numerous individual persons directed toward a fixed aim.

However, the problem of collective guilt lies in a sense much deeper. The thought to reject collective guilt goes back into the most ancient times. It originated in the Old Testament and through the Greeks and Christianity it spread over the entire world. In this way it has become the penal guiding principle of the entire moral world order. In Roman days this sentence was expressed clearly, "Societas delinquere non-potest." a body of people can not be the perpetrator of a penal act. In modern times we have retained the thought of individual guilt.

H2716 – 0009

On the 20th of February 1946 the Pope said in his radio speech that it was a mistake to assert that one could treat a person as guilty and responsible merely because he had belonged to a certain organization, without taking the trouble to investigate in the individual case whether the person in question had made himself personally guilty through his actions or his failure to act; that was an infringement on the Rights of God.

In the same sense the Hague Rules on Land Warfare of 1907 in Article 50 expressly prohibit the infliction of fines because of the actions of individuals for which the population cannot be considered co-responsible.

Finally, the former State Secretary, K.H. Frank, was condemned to death and executed, because he had among other things, had the village of Lidice wiped out because of the conduct of individual inhabitants of the village. That is to say, the fact that he had assumed collective guilt of the village community and inflicted a collective punishment on the village, was counted as a crime. Thus, in our case, it cannot be proper to punish an organization as a whole collectively, because of the crimes of individuals.

With these brief references I believe I have proved that the basis of the accusation against the Organization is not firmly established. I agree with the legal statements of Mr. Jackson only insofar as he concludes his legal observations with the statement that: "It is completely unbearable from such thinking according to the letter of the law to reject personal impunity." The personal impunity of the individual members of an organization in connection with the punishable actions committed within the organization

H2716 - 0010

cannot be derived from the rejection of collective guilt; rather, the culpability of the individual for the punishable actions committed by him can be emphasized.

The legal basis of the whole trial against the individuals and organizations here accused is the Charter created by the United Nations. The defense has already taken an opportunity to express doubts about the charter. I refer to that.

I want to bring out one point of view once more. If, in case an organization is declared criminal, the former members are to be punished because of their mere membership, then they must pay for something which was legally permitted at the time of the action. Thus the Charter establishes norms with retroactive force . The legal principle, however, which prohibits laws with retroactive force, is firmly established in the law of all civilized states.

Thus the French Constitutional Assembly on 14 March 1946, decided to give the Constitution of the French Republic, as a preamble, a new formulation of the "Declaration of Human Rights." This Declaration -- I emphasize "Declaration of Human Rights" -- reads in Article 10:

"No one can be condemned or punished unless on the strength of a law passed and published before the deed."

According to this general international legal concept, the American Military Government in Germany ordered through Law No.1 in Article 4:

H2716 - 0011

"A charge can only be pressed, sentence passed, and punishment executed if the act at the time of its commission was expressly legally declared punishable."

The same law prohibits the use of analogy or ostensibly healthy popular feeling. Yes, the American Military Government considers the principle mentioned so important that it punishes its violation with the death penalty, (Article 5.)

Finally, I may be permitted in this connection to mention Article 43 of the Hagge Agreement of the year 1899, according to which the United States of America as well as England and France, undertook the obligation toward the other States, including Germany, in occupying a foreign country, to observe the laws of this country unless there was any compelling obstacle.

The United Nations have proclaimed that the goal of this trial is to restore justice and respect for International Law, and this to serve World Peace. They have acknowledged fundamental human rights and recognized principles of International Law. Stamping as a criminal for formerly legal political convictions, however, could be considered a limitation of this acknowledgment and could shake confidence in fundamental human rights. As a precedent, such a judgment could have disastrous consequences for the Idea of Justice and Personal Freedom.

II

ADMISSIBILITY OF THE CHARGE AGAINST THE GESTAPO IN PARTICULAR.

My previous statements concerned the admissibility of the charge against all organizations. For the Gestapo there are two further factors.

H2716 - 0012

The Gestapo was a State Institution, a number of State Agencies. An agency, in contrast to a society or other private organization, pursues not selfchosen but State-ordered aims, not with its own but with State means. It fulfills its function in the framework of the total State activity. Its actions and measures are State administrative acts. In the case of a State agency one cannot speak of submission to a common willof the agency nor of a union, more or less by agreement, for a common purpose. Thus there is lacking here the prerequisite of the concept of an organization or group and of membership in the sense of the Charter. If private organizations cannot be considered responsible and subject to punishment, then State Agencies and Administrative Offices certainly cannot. Only the State itself could be held responsible for its institutions if that were at all possible -- never the institution itself.

The Institution of the Police -- the Political Police too -- is part of the internal affairs of a State. A recognized international legal maxim, however, prohibits the interference of a State in the internal legal affairs of a foreign country. And so there are objections to the charge against the Gestapo in this connection as well, which I consider it my duty as defense counsel to point out.

Finally, there is a further question to be examined: If the Gestapo is to be declared criminal one of the principal defendants must have been an official of the Gestapo. But was any one of the principal defendants ever an official and thus a member of the Gestapo ? That this prerequisite for trial exists seems very doubtful for Goering as Prussian Prime Minister was Chairman of the Prussian Secret State Police and could give orders to it but he did not belong to it. His position as "Chief of Secret State Police" was, moreover, eliminated with the appointment of the Chief of the German Police and with the Nationalization (Verreichlichung) of the Prussian Secret State Police in the years 1936 and 1937. Frick, as Reich Minister of the Interior, was the competent minister for the Police but he was never an official of any particular branch of the Police. Kaltenbrunner, finally, has testified that with his appointment as Chief of the Security Police and the SD he was not made Chief of the Gestapo, and in fact he was not -- as Heydrich had

H2716 -0013

been since 1934 -- the head of the Secret State Police Office. Nor was the Chief of the Security Police and the SD under the budget of the Secret State Police but was carried on the budget of the Reich Ministry of the Interior.

C. Substantive legal prerequisites (prerequisites for the establishment of culpability of the Indictment.

I.

GENERAL

In case Indictment and condemnation of the Gestapo should nevertheless be judged admissible, I now turn to the question of whether the substantive legal prerequisites are given for declaring it criminal. In other words

H2716 – 0014

it must be examined whether the Gestapo as a whole was a criminal organization or group in the sense of the Charter. In the examination of this question I shall follow the conditions laid down in the decision of the Court of 13 March 1946 and designated as relevant.

But before I go into this question I must point out a general error regarding the type and extent of the activity of the Gestapo. Among the German people and perhaps even more abroad, it was customary to ascribe to the Gestapo all police measures, terror acts, deprivations of freedom, and killings, as long as they had any police tinge at all. It became the scapegoat for all misdeeds in Germany and the Occupied Territories and today it is to bear the responsibility for all evil. Yet nothing is more mistaken than that. The error arises from the fact that the whole Police, whether Criminal Police, Wehrmacht Police, Political Police, or SD, were, without distinction of the branches, considered Gestapo. When Heydrich said at the German Police Rally in 1941: "Secret State Police, Criminal Police and Security Service were enveloped in the mysterious aura of the political detective story," this characterized the almost legendary atmosphere by which the Gestapo in particular is surrounded to the present day. It was apparently according to Heydrich's tactics to let the Gestapo appear in the opinion of people at home and abroad as an instrument of terror, to spread fear and horror of it, in order to create fear of the commission of intrigues hostile to the State.

That the Gestapo was unjustly accused of many crimes may be shown by a few examples. One of the most disgraceful individual crimes during the war was the murder of the French General De Boisse at the end of 1944 or the beginning of 1945.

H2716 - 0015

The French Prosecution charges it against the Gestapo on the basis of documents 4048 to 4052-PS. According to 4050-PS, however, Panzinger, who was entrusted with the execution of the plan, was at the time Heade of Office V of the RSHA, that is Head of the Reich Criminal Police Office. Schulze, who is mentioned in 4052-PS, also belonged to the Reich Criminal Police Office. 4048-PS, according to the file note V. cB, was also drawn up by the Reich Criminal Police Office as Office V of the RSHA. Office IV of the RSH. -- Gestapo Office -- was thus not involved, but only the Reich Criminal Police Office which included the section charged with searching for prisoners of war. Himmler, who as Chief of the Replacement Army, was also in charge of the Prisoner of War System, contacted Panzinger directly in this matter; Office IV did not have knowledge of this occurrence at any stage. Whether Kaltenbrunner knew anything, he must make clear.

These facts are proved by the Gestapo Affidavit No. 88.

In the report on the condemnation of participants in German War Crimes in the Russian city of Krasnodar (USSR 55), which was submitted by the Russian Prosecution, the commission of these terrible crimes is charged against the Gestapo without further proof. In reality, this was the activity of an Einsatzkommando, not the Gestapo. (See Gestapo Affidavit No. 45)

I may refer to the testimony of the witneses Dr. Knochen and Franz Straub. It proves that in Belgium and France, as everywhere, the Gestapo was frequently unjustly accused of crimes.

Through several witnesses, (Dr. Knochen, Straub, Kaltenbrunner,) it has been established besides, that frequently in the Occupied Territories and in the Home Area swindlers and other shady characters appeared

H2716 – 0016

H2716 - 0017

who falsely passed themselves off as Gestapo officials. Himmler himself demanded that such false Gestapo Officials should be handed over to the concentration camps.

(See Gestapo Exhibit No. 34 - USA 207;) Gestapo Affidavit No. 68.

As indicated, the Supreme Commander of Sipo, Heydrich, was not entirely without responsiblity for the false opinion about the Gestapo. Thus he consciously furthered the rumor that the Gestapo knew everything politically suspicious because it spied on the population. This could not be true as is proved by the fact that the approximately 15,000 to 16,000 Gestapo officials in question, even if they had watched and spied on the people, would have been by far inadequate for this purpose (Mr. Best).

The crimes which Gestapo members actually commited are not to be excused. But it is equally certain that many things occured for which the Gestapo officials are not responsible, and that it was customarily not examined and differentiated whether certain deeds or misdeeds were carried out by members of the Gestapo or the Kripo, the SS or the SD, or even by native criminals. If, in the interest of combatting crime, it is judged proper in a penal condemnation to give a choice as regards the deed in the sense that punishment is to be inflicted whether the established deed falls under this or that penal law, such a choice can never be given as regards the person of the perpetrator. In other words: it would not be just to ascribe a deed to the Gestapo if the guilt of its members is not absolutely established.

II.

Constitution, Aims, Tasks and Methods of the Gestapo.

As already said the Gestapo is no union of persons in the technical sense and probably also in the sense of the Charter. Its constitution, its aims and tasks and the

H2716 - 0018

The system of professional civil servants had been introduced into the Gestapo, and maintained. On the other hand, civil servants were partly not particularly respected by the Party because of their political or non-political past. In order to strengthen their authority during the carrying out of their duties, in particular when acting against national socialists, they were to appear in uniform, as witness Dr. Best has testified - who has described himself as the "motor" of this assimilation. With this assimilation the Gestapo officials - as, incidentially, also criminal police officials who were also to be assimilated - were formally listed among the SD formations of the SS, though they remained solely under the jurisdiction of their own superiors without doing any SS or SD duties. Furthermore, the assimilation was only carried out slowly and to an inconsiderable degree. At the outbreak of war in 1939 only approximately 3.000 of the members of the Gestapo, out of a total of 20,000, had been assimilated. It is significant that Himmler by no means liked to see the Gestapo appear publicly wearing SS uniforms, as becomes evident from Document USA - 447.

During the war even non-assimilated persons had to wear the SS uniforms on certain duties without being members of the SS. Apart from that the SS did not control the police or exert any type of influence upon its activities; it was only in Himmler's person that there was personal union in the leadership of the two.

With reference to this statement I refer you to the testimony of Dr. Best.

The Gestapo as a whole had nothing to do with the SD, which, as is known, was purely an organization of the Party. Personal union only existed in the position of the chief of the SIPO and the SD (Heydrich, later Kaltenbrunner), which was accidental, however, and did not form an organizational or functional interconnection. In no case was the SD centralized with the Gestapo in order to form a system of police. The SD did not have to support the Gestapo in its tasks, it had no police tasks whatever.

H2716 - 0019

The officials of the Gestapo did not, by any means, consider themselves members of a uniform organization with the SS and the SD. Every member of one of the three organizations knew that he belonged to an independent institution serving independent purposes.

Although the Gestapo was, therefore, in no way organically or, from the point of view of duties, connected with the Party, it was, nevertheless not altogether detached from the administrative tasks of the State being, as it was, a State authority. To the contrary, on every level interconnection existed with the general and interior administration. The higher administrative organizations: The Ministers of the Interior in the counties, the Supreme Presidents and Government Presidents were entitled to receive reports and issue instructions. Evidence has, in fact, shown that the majority of all State Police actions were carried out by the district and local police organizations and the Gendarmerie. This fact particularly furnishes an indication how serious, and doubtful, it is to indict the Gestapo as an institution of the State. Because, thinking consequently, the officials of the aforementioned administrative organizations as well as those working in a State Police capacity would have to be indicted together with the Gestapo, and that thought alone appears absurd.

If it is impossible for these reasons to speak of a coordination of personnel in the case of the Gestapo, then it is equally impossible to speak of a membership in the sense of the indictment, and the demands of voluntary service were even less fulfilled. Not one of the witnesses examined was able to justify this, the prosecution's allegation, to the contrary, all witnesses had to testify, that as a matter of principle membership of the Gestapo was generally not on a voluntary basis.

H2716 -0020

The assignment of officials to the Gestapo took place to a large extent in that manner, that from a previous organization they were transferred to an organization of the Gestapo. The order for transfer had to be obeyed on the strength of the existing civil servants law. Severe disciplinary disadvantages would have been the result of a refusal and, very probably, the loss of the position held; and had such a refusal been based on the statement that for reasons of conscience the officials did not agree with activities of the Gestapo, then he would, as would have any civil servant in a similar case, become subject to disciplinary proceedings or even penal proceedings resulting in the loss of his position and hard-earned privileges and, apart from that, he would even have gone to a concentration camp.

Replacements of civil servants for the Gestapo were organized in such a way that, in accordance with police civil service law, 90 % were drawn from the former protection police officials who wished to become criminal police officials - whereas only 10 % could be taken from other professions.

Aspirants from the protection police could not, however, freely decide whether to join the Gestapo or Kripo; they were allotted by the "assignments department of the police" at Potsdam to the Gestapo or the Kripo, according to requirements and, even, against their will. Incidentally, we are here concerned with protection police officials with 8 to 12 years' service, as well as old police officials who had been in the police service already before 1933.

It was almost impossible for an official to break loose from the Gestapo, apart from general reasons such as death, sickness, dismissal because of a crime. During war the Gestapo, just like the entire police, was considered as being on active service and was subject to military discipline so that resignation was totally impossible.

H2716 - 0021

It was even prohibited to volunteer for military service at the front.

The same principles of assignment and retirement also applied to the institutions under the jurisdiction of the Gestapo, such as - Border Police, Military Counter Intelligence, and Customs Police - not to forget the numerous Emergency Service employees (Notdienstverpflichteten) who, at times, represented nearly one-half the total personnel strength.

From these statements mostly based on the testimony and affidavits particularly from the witnesses Best, Knochen and Hoffmann, the following becomes apparent: The Gestapo consisted of a multitude of State organizations. But in the case of such an organization one cannot mention members of that organization in the same way as members of a private organization. For that reason there was no membership of the Gestapo and even less a voluntary one; on the contrary, there was only a public-legal position of a civil servant.

The question also whether the aim and task of the Gestapo was criminal must be answered in the negative. The aim of the Gestapo - just like that of any political police - was the protection of the people and the State against attacks of elements hostile to the State against its existence or its free development. Accordingly, the task of the Gestapo is defined in paragraph 1 of the law of the 10th of February 1936 - Gestapo Exhibit No. 7 - as follows:

> "The Secret State Police has the task to investigate all currents dangerous to the State and combat them, to collect and exploit the result of such investigation, to inform the government of the State and other authorities of results important for them, keep them informed and supply them with suggestions."

H2716 - 0022

These tasks of the Gestapo in their character were the same as those of the Political Police before 1933, and as those of any Political Police in foreign countries. What is to be understood by "currents hostile to the State" depends upon the respective political structure of a State. A change in the political leadership cannot retroactively render illegal the activities of a political police which have been directed against forces other than those hostile to the State. The activities of the Gestapo had been legally regulated by instructions issued by the State. Its tasks consisted, in the first place - and mainly - in the investigation of politically punishable actions in accordance with the general penal code in which connection the officials of the Gestapo became active as auxiliary officials of the Public Prosecutor's Department, and it further consisted of the prevention of such actions through preventive measures.

Now, of course, the methods of the Gestapo are made the basis of serious accusations against it in three ways. They are even held against them as crimes. One method is the protective custody and transfer of persons to concentration camps. I know: Even when I only mention that name it radiates something like the cold breath of graves. But even then imposing of protective custody was governed by exact regulations. Protective custody, which in addition is not a specifically German or specifically national socialist invention, was recognized as legal in several findings of the Reich Courts, the Prussian Supreme Administrative Court, and also Constitutional Courts.

A second method - that of the so-called third degree interrogation- must, to put it mildly, give cause to serious misgivings. On the other hand, this method was only rarely used (see particularly witness Dr. Best). And then only by order from the highest authorities and never to force a confession.

H2716 - 0023

This method as well which we shall discuss further in connection with the discussion of the individual crimes was regulated by law and even during the time of the war; compare Gestapo Exhibit No. 60.

And finally, the Prosecution is accusing the Gestapo particularly to the effect that it was not bound by law but rather that it acted purely arbitrarily. In reply to this, I should like to say that if it is established in two laws (dealing with the Anschluss of Austria and the annexation of the Sudetenland) that the chief of the German Police can take measures going beyond the existing laws, in that way arbitrary police power is not legalized: rather, we are concerned with a typical legal transfer of the authority to establish police law. Measures in the sense of these laws were not meant to be individual cases but rather directives of a general sort which could be issued even if in the annexed countries no laws existed as yet in this regard but which were nevertheless binding for the population and the executive power of the police because the necessary authority had been granted by the head of the State.

The principle that no individual case could be carried out along arbitrary lines but rather that exact regulations existed and were to be observed in all executive actions was strictly adhered to. (Witness Dr.Best)

It never even occurred to Gestapo officials, at least not before the war, that they might be accused of arbitrary actions from abroad. The tasks and methods, which were for all the world to see legally restricted and which did not apply only to the members of the Gestapo, cannot be considered criminal by the world, a world which not only formally recognized the German Reich Government, who carried the sole responsibility in this matter, but a world which repeatedly showed its recognition to the German people.

H2716 – 0024

If foreign countries had objected to the aims pursued by the Gestapo, it would not have been conceivable that numerous foreign police systems worked in close collaboration with the German Gestapo, a collaboration, by the way, which was not negotiated through diplomatic channels and that foreign police officials visited the German Gestapo, obviously with the intention of learning from it. Compare Gestapo Affidavit Nos. 26 and 89. In any event, because of this the individual Gestapo official must have considered his activity internationally recognized.

The aims, tasks, and methods of the Gestapo remained constant even during the war. In so far as other acts were intended for it, other than the acts described, they must be evaluated as acts foreign to the police and outside the organization. Later we shall deal with the Einsatzgruppen, their composition, their activity, and their relation to the Gestapo.

III

Individual crimes, of which the Gestapo is accused.

Following the indictment, I shall now turn to the questions as to whether the Gestapo participated in a joint plan for the committing of crimes and whether it participated as a deliberate part of the whole in the sense of the indictment in the so-called Nazi conspiracy. In order to deal with these questions, it appears necessary to examine first of all just which crimes it can be proved were committed by the Gestapo.

In order to characterize an organization as criminal, just as in the case of an individual, only typical aspects may/be considered; that is, only such actions and characteristics which are in accord with the peculiar nature of the respective organization.

Therefore, incidents cannot be used which, even though they took place within the organization, must be considered as foreign to the organization, in this case foreign to the police; and furthermore actions may not be cited which were committed by individual members.

H2716 - 0025

In order to determine the fact whether these aspects are to be considered criminal, German law should be consulted, which does not deviate from the views held by other civilized countries in the designation of general criminality.

Crimes.

In line with the method followed in the indictment I shall subdivide the crimes of which the Gestapo is accused into crimes against peace, war crimes and crimes against humanity.

a) Crimes against Peace. In this connection the indictment raises the accusation that the Gestapo, together with the SD, had artificially created border incidents in order to give Hitler a pretext for a war with Poland. Two border incidents are cited; the attack on the radio station Gleiwitz and[a/] feigned attack by a Polish group at Hohenlinden.

The attack on the radio station at Gleiwitz was not carried out with the participation of Gestapo officials. Witness Naujocks, who was the leader of this undertaking, who, however, did not belong to the Gestapo, has confirmed unequivocally that not a single member of the Gestapo participated in this action. Instructions for this undertaking emanated directly from Heydrich and were transmitted orally by him directly to Naujocks.

Instructions concerning the feigned attack at Hohenlinden were transmitted by Mueller the Chief of Amt IV of the RSHA, to Naujocks; however Naujocks who directed this action has expressly denied any participation by Amt IV.

H2716 - 0026

He stated that quite naturally it was not one of the tasks of Amt IV of the RSHA to engineer border incidents. Mueller did not select members of Amt IV for the carrying out of the latter border incident, but only individuals who were in his confidence, for Heydrich did not trust the Gestapo with respect to secrecy and reliability.
Naujocks stated literally: "I cannot identify Mueller with the organization of the Gestapo."

These border incidents were not a concern of the Gestapo, but rather a personal concern of Heydrich, even to the extent to which Mueller participated. The Gestapo has not been accused of other crimes against peace.

(b) War Crimes.

1) One of the gravest accusations raised against the Gestapo deals with the mass murder of the civilian population of the occupied countries through the so-called Einsatzgruppen. Not only the defense but the entire German people condemn the inhuman cruelties committed by the Einsatzgruppen. Those who committed cruelties like that have defiled the name of Germany and must be called to account.

Members of the Gestapo participated in the actions of the Einsatzgruppen. I should like to examine the extent to which the organization of the Gestapo, in toto, can be held responsible for the criminal deeds of the Einsatzgruppen.

The Einsatzgruppen had to fulfill the tasks of the Chief of the Sipo and of the SD in rear echelon areas which meant that they had to safeguard law and order along the rear of the fighting unit. They were subordinate to the armies and liason men were detailed to the armies.

H2716 -0027

The Einsatzgruppen were units which had been established for certain purposes. They were composed of members of the SD, of the SS, of the Kripo, of the Gestapo, the Ordnungspolizei, of those who had to render emergency service and of indigenous forces. The members of the SD, of the Kripo and of the Gestapo were used without consideration for their former membership in their own branch.

Looking at it from the point of view of personnel, we are concerned here with the use of the entire police and of the SD, not with the use of the Gestapo alone. The actual participation of the Gestapo in the Einsatzgruppen amounted to aproximately ten per cent. This, of course, was a very small number in comparison with the total figure of Gestapo officials. Being detailed to the Einsatzgruppen took place without any effort on their part, very frequently against their will, but on the strength of orders from the RSHA. Upon being detailed to the Einsatzgruppen, they were eliminated from the organization of the Gestapo. They were exclusively subordinate to the leadership of the Einsatzgruppen which received its orders in part from the higher SS and police leader, in part from the High Command of the Army and in part from the RSHA directly. Any connection to the Home Office and to the organization of the Gestapo was finally severed through their being used by the Einsatzgruppen. They could not receive orders of any kind from the Gestapo, and they had been removed from the sphere of influence of the Gestapo.

These principles governing the Einsatzgruppen applied particularly to the Einsatzgruppen in the East which are the ones that have been accused of the most crimes and the most serious crimes. To them also applies the fact that the Osteinsatz was not a Gestapoeinsatz either in personnel or in the tasks given, but an Einsatz of various units which had been set up especially for this purpose.

H2716 - 0028

state police office administers the state concentration camps, but this regulation was only on paper and was never carried out in practice. It was rather the Reichsfuehrung-SS which was responsible for the concentration camps which appointed an inspector of concentration camps whose duties were later (1941) transferred to Amtsgruppe (B ? D ?) of the WVHA of the SS.

This is clearly confirmed among others by the witnesses Ohlendorf and Dr. Best and a large number of documents.

After Hitler's seizure of power in 1933 the SA and SS had independently established numerous camps for political prisoners. The Gestapo on its own initiative took steps against these unauthorized concentration camps, eliminated them, and released the inmates. Gestapo Chief, Dr. Diels, even brought upon himself the accusation that he was supporting the Communists and sabotaging the Revolution. (See Affidavit Number 41, testimony of the witnesses Vitzdamm and Grauert).

Thus the concentration camps were never under the Gestapo. The inspectorate of concentration camps and the WVHA remained independent agencies and their chiefs were directly subordinate to Himmler.

The order contained in document USA-492 does not affect the administration of concentration camps but it regulates -- in the interestof the prisoners -- the assignment of prisoners to the various camps, so that political prisoners would not be sent to camps, which, according to their structure and their form of work were meant for hardened criminals.

Of the large number of documents which prove the non-participation of the Gestapo in the administration of the concentration camps, I should like to mention only one more: Gestapo Exhibit number 38. This shows that all persons not mentioned there and thus all

Gestapo officials regardless of their rank or position needed written permission of the Inspector of the concentration camps. If the concentration camps would have been subordinate to the Gestapo, there would not have existed a necessity to obtain this written permission to enter a concentration camp .

In each concentration camp there existed a so-called political department, the position of which in the camp and its relationship to the Gestapo is a matter of conflicting views. In this political department were employed one to three criminal officials of the Gestapo or of the KRIPO. These officials did not form an office of the Gestapo or of the KRIPO; they rather were attached to the Commandant of the camp as political experts to fill police tasks in regard to individual prisoners. Above all, they had to conduct the interrogations of those prisoners against whom there was pending a case before the ordinary courts; this was done upon the request of the ordinary courts or the secret state police, or the criminal police. In regard to the power to issue orders they were exclusively subordinate to the commandant of the concentration camp. They had no influence whatsoever on the administration and conduct of the camp or on the transfer, discharge, punishment, or execution of the prisoners.

As it can be seen, the concentration camps were not an independent institution of the Gestapo, but rather, institutions which served its purposes in the transaction of its police tasks. For the Gestapo they were the same as the regular prisons were for the courts or for the state attorney's, namely, executive institutions to carry out the protective custody ordered by the Gestapo on which I shall dwell now.

H2716 - 0029

6) Execution of Commandos and Paratroopers.

The next link in the chain of major crimes of which the Gestapo is accused is the charge that the Gestapo and the SD executed Commandos and Parachutists who had been taken prisoner and protected civilians who had lynched Allied fliers. What may be said in this connection?

Document PS-553 USA 500 -- it is a secret order of the OKW of August 4, 1942 concerning counter measures against Parachutists -- the combat of Paratroopers is characterized as the exclusive concern of the army, while the combat of "single parachutists" was transferred to the Chief of the Security Police and the SD. The latter task did not consist in the excution of the Parachutists. The transfer should serve only the purpose of establishing eventual sabotage orders of these parachutists and to receive news about the intentions of the enemy.

On October 18, 1942, Hitler ordered the destruction of all Commando groups (USA 501). This order was directed not to the German Police but to the German Army. Paragraph 4 of that order stated that all members of such Commandos falling into the hands of the army should be transferred to the SD. Nothing can be learned about any part played by the Gestapo in these measures against the Sabotage Commandos. If, however, the Gestapo had had a share in it, their task foreign to the police would have been transferred to it, the execution of which cannot be accounted for by the Gestapo as such since doubtless under any circumstances only a small number of individuals participated in it.

Besides, the following should be pointed out: As Rudolf Mildner in his affidavit of November 16, 1945 -- PS 3374 -- stated, an order was issued in the summer of 1944 to the Commanders and Inspectors of the Sipo and the SD to the effect that all members

H2716 - 0030

of the American and English Commando Troops should be surrendered to the Sipo for interrogation and execution. This may be taken as a proof that at least up to that moment the Sipo had not shot any Commando groups, or a need for this order had not existed. Mildner continues to say that that ord had to be destroyed immediately, which means that only the commanders and Inspectors of the Sipo could gain knowledge of it. Since the invasion had started long ago and since the Allies relentlessly advanced in France, it wa impossible to execute these orders actually, since there were not left any officers of the Sipo in the field of operations, which was pushed back continuously. Equally it is unlikely that that order, which presumably was issued by Himmler, ever became known by the mass of Gestapo members.

Above all, the Prosecution rests its case on an order of Himmler of August 10, 1943, (Document RF 1419, USA 333), stating that it was not the ta of the police to interfere in controversies between Germans and bailed-out English and American terror fliers, and the Prosecution concluded from that that the Gestapo approved of lynch justice, However, it is of significance that that order of Himmler's was addressed to all of the German Police, abov all to the regular police. For in the case of the bailing-out of Allied air crews, as a rule, it was not Gestapo officials who made an appearance, but members of the regular police, the Gendarmery, or the local police office. Only those branches of the police system were in charge of street patrols, a not the Gestapo.

As proven by the numerous affidavits, all of the Gestapo members were not informed of this order, but rather learned of it only through the statements Goebbels made over the radio.

54 The evidence given by the witness Bernd von Brauchitsch, first assistant to the supreme commander of the Luftwaffe, shows in a characteristic manner that that order was generally sabotaged. He stated: "In the spring of 1944 the civilian losses by air attacks rapidly increased. Apparently this made Hitler issue orders not only of defense but of measures against the aviators themselves. As far

H2716 - 0031

H2716 - 0032

as I know, Hitler advocated the most severe measures. Lynchings were to be permitted most liberally. The supreme commander and the chief of the General Staff did, it is true, condemn the attacks on the civilian population in the sharpest terms, but yet they did not desire the execution of special measures against the aviators; lynchings and the refusal to give shelter to the crews who had bailed out were to be refuted." And his further statement is of particular importance:

" The measures ordered by Hitler were not carried out by the Luftwaffe. The Luftwaffe did not receive any orders to shoot enemy aviators or to transfer them to the SD ".

Actually the Gestapo officials in the few cases when accidentally Gestapo members were present when allied fliers bailed out, not only did not kill them but protected them against the population - compare Gestapo Affidavit No. 81 - and if they were wounded they saw to it that they were given medical care. The few instances when higher Gestapo officials ordered and executed the shootings of crews who had bailed out have already found their just penalty before the courts of the occupying powers. It would be unjustified to hold the whole of the Gestapo responsible for them.

7) The next point of the indictment states: The Gestapo and the SD brought civilians from occupied countries into Germany to bring them before secret courts and sentence them there.

H2716 - 0033

On the 7th of December 1941 Hitler issued the so-called Nacht-und Nebel-Decree. According to this decree persons who had transgressed against the Reich or against the occupying power in the occupied areas would, as a measure of intimidation, be taken to the Reich where they were to be put before a special court. If for any reason whatsoever this was not possible the transgressors were to be placed in protective custody in a concentration camp for the duration of the war.

As may be seen from the distribution list in Document 833-PS, this order went only to the offices of the Wehrmacht and not to the offices of the Gestapo - with exception of Amt IV of the RSHA itself. The execution of this decree was a task of the Wehrmacht, not of the Gestapo. According to directives contained in Document 833-PS it was for the Counter Intelligence offices to determine the time of arrest of individuals suspected of espionage and sabotage.

In the Western areas, for they were the only ones concerned here, this order was to be carried out therefore by the Wehrmacht which exercised police power through its own men or those of the Security Police who were directly subordinated to the Wehrmacht Commanders-in-Chief.

Only to that extent was the Security Police participating in the execution of this order. The Gestapo, which was numerically very weak in the occupied Western areas, was only drawn in to the extent that the RSHA established a Stapo office, which had to take charge of the arrestees. Through the Stapo offices in agreement with the competent Counter Intelligence offices, the details of the transporting off to Germany were determined and particularly whether a transport was to be conducted by the Secret Field Police (Geheime Feldpolizei), the Field Gendarmerie (Feldgendarmerie) or by the Gestapo. The Gestapo had no other tasks assigned to it by the Nacht-und Nebel- Decree.

H2716 - 0034

participation of the Gestapo,has not been cleared.On the basis of the affidavits before me and the statements by the witnesses Straub and Dr.Knochen, the Gestapo only in a few places had prisons of its own.As a rule, there existed only one police prison to be used by all local police branches.The administration and supervision of these police prisons was always the task of the local police administrator, in the occupied territories of the Army too.At any rate,the Gestapo had no right to interfere into the conditions in which the prisoners found themselves. Therefore,it is unlikely that the Gestapo should have carried out the killings of the prisoners upon the approach of the enemy. On the other hand,it has been established with certainty that in many places the prisoners,either were dismissed or were handed over to the Allied troops when they occupied the locality. Compare Gestapo affidavits 12,63 and 64.

May I be permitted to dwell on two cases which came up during the proceedings: The witness Hertmann Lauterbacher has given evidence concerning an order in accordance with which the inmates of the prison at Hameln in Westphalia, supposedly had been killed upon the approach of the enemy. The person who issued that order, however,was not a Gestapo officer,but the Kreisleiter of Hameln who for doing so was sentenced to seven years'imprisonment by the Fifth British Division,and those who were to execute that order were no Gestapo officials,but prison employees who,however, refused carrying it out.

The second case concerns the camps Muehldorf, Landsberg and Dachau in Bavaria. I refer to the evidence given by Bertus Gardes the former Gaustabsamtsleiter under Gauleiter Giessler of Munich (USA 291). It states that in April 1945,the inmates of the Dachau concentration camp and of the Jewish work camps Muehldorf and Landsberg were to be liquidated, that means killed by order of Hitler.

H2716 - 0035

c) Crimes against humanity committed by the Gestapo.

The discussion regarding the crimes of which the Gestapo is accused now brings me to the third and last group, crimes against humanity.

1) The prosecution alleges that the Gestapo, together with the SD, had been the foremost instrument for the persecution of the Jews. The Nazi regime had considered the Jews as the chief obstacle for the police state, by means of which it had intended to pursue the ends of aggressive war. The persecution and extermination of Jews is supposed to have served this aim too. The National Socialist leaders had regarded anti-Semitism as the psychological spark to inflame the populace. The anti-Jewish actions had led to the murder of an estimated six million human beings.

Truly a shattering accusation. What has been unveiled during this trial, and confirmed by the witnesses Hoess and Ohlendorf, forms the basis of a guilt which, unfortunately, will forever adhere to Germany's name. Yes what must still be examined after these sad facts are ascertained is the question in how far the Gestapo has participated in this persecution and extermination of the Jews.

An attitude leading to correct results is only possible if differences are made regarding the activity of the Gestapo, taking into consideration the point of view of time.

After the seizure of power, the Hitler Government had published a number of laws punishing the Jews. As far as these legal regulations contained penal clauses, possibly necessitating the employment of force by the police, the Gestapo may, under certain circumstances have been connected with them. Infringement of such penal laws by Jews were comparatively few, and only the Nurnberg laws,

H2716 - 0036

announced in 1935, caused increasing police activity, whereby, however, during the first period, every case was handed to the proper courts for the passing of proper sentences. A change only occurred in the last years of the war. That the Gestapo began to act in these cases cannot be held against them; because it too had to comply with the existing laws of the State, that is to say, had to obey the orders of the State just like the soldier must obey his orders.

Apart from that, the administration, such as the Administration of the Interior of the Reich Finance Administration and the communal administration, have become active against the Jews to a much larger degree than the Gestapo; that is to say, both regarding their personal legal status as well as their property, houses, etc.

Through the excesses of November 1938, the Jewish problem became considerably more acute. It has been ascertained beyond doubt that this revolting action did not originate in the Gestapo In fact, the prosecution do not implicate the Gestapo in this connection, or only by saying that they had not intervened. Information on this point is contained in the testimony of witness Vitzdamm, according to which during the conference on the 9th of November in the evening, in Munich, with Gestapo chiefs present, Heydrich had declared quite openly that this action did not have its origin in the Gestapo. Over and above this, he explicitly forbad the Gestapo to participate in the action, and gave instructions to the Gestapo chiefs present to return to their department at once and take all steps to stop the action. The contradiction contained in this testimony, and the contents of Heydrich's teleprint letter, sent to all Stapo Departments during that night, (Document USA 240) can be explained by the fact that between this conference of Heydrich's with the Gestapo Chiefs, and the issuing of the order, a development had taken place which could only be limited but no longer rescinded.

H2716-0037

When the Gestapo offices received Heydrich's circular, the holocaust of senseless destruction had already swept over Germany. Nothing remained to be done but the prevention of further excesses; that was done.

In this connection I refer also to the affidavit No. 5 of witness Luitpold Schallermeier, which also has been submitted by the defense counsel for the SS, stating that Himmler himself had dictated the order to the Stapo offices and revealed his conversation with Hitler from which one learned that Hitler had ordered the safe keeping of Jewish property and the protection of the Jews, as shown by the evidence given by the witness Vitzdamm and as proved by numerous other affidavits, this order was carried out universally. I am making reference to the Gestapo affidavits No. 5 , 6, 7 and 8.

The arrest of 20.000 Jews which followed the excesses was caused by Himmler (Document USA 240) and was as a rule carried out by the Kreis and local police authorities. The overwhelming majority of the Jews, however, were not transferred into concentration camps and were released step by step. This is proven for the entire territory of the Reich by Gestapo affidavit No. 8.

For the first time, the Gestapo was burdened by a task foreign to its nature by the arrest of the Jews in November, 1938. The Gestapo - as shown by the evidence given by the witnesses Best and Hoffmann - would never have executed or suggested these arrests which were considered unnecesarry from a police point of view. Thefact that the arrested Jews were soon discharged justified the assumption of the Gestapo officials that it was but a one time gesture and not the overture for worse to come

H2716 - 0038

The Jewish question which the National Socialist administration had elevated to a point of its program originally was to be solved by the emigration of the Jews. For this reason, in 1938, there had been founded in Vienna the central office for Jewish emigration which succeeded in the emigration of a large number of Jews. During the war too, the emigration was continued according to plan as shown by the documents USA 30A - USA 410. In addition to it, there started the evacuation of Jews which were carried out in accordance with a detailed decree of the Chief of the German Police. On the basis of that decree, the local Stapo offices had to prepare the evacuation and to cooperate with the communities. To their task belonged particularly the equipment of the evacuees with clothing, shoes, tools, etc. In most cases the transports were not accompanied by Gestapo officials, the personnel was rather composed of members of the Security Police, the Criminal Police, and the Gendarmerie. The destination was not announced in most cases. The evacuations were carried out without friction and unnecessary harshness.

From a humanitarian point of view one might well regret those evacuations of Jews most profoundly; yet the part played by the Gestapo in them consisted in carrying out the decrees and orders originating from the highest authorities of leadership. Actually, the competency of the Gestapo in regard to the Jewish question had not at all the importance generally attributed to it. In the Jewish department of the Gestapo, both in the RSHA and in the individual Gestapo offices, only a very few employees were active.

In 1941 Himmler decreed that the Jews in Germany should be isolated in Polish Ghettoes. This resettlement of the Jews was the task of the Higher SS and Police Leader and was carried out

H2716 - 0039

by the regular police.

When Hitler's policy toward Jewry up to 1941 aimed only at the elimination of the Jews from Germany by emigration and later evacuation, it gained in sharpness after America's entering the war. In April 1942 Hitler ordered the "final solution of the Jewish question", i.e. the physical extermination, the murdering of the Jews. The proceedings have shown in how terrible a manner this order was carried out. The tool which was used by Hitler and Himmler for the carrying out of that order was SS Obersturmbannfuehrer Adolf Eichmann, who, with his Jewish department, in an organizational manner belonged to Amt IV of the RSHA, who however actually had an entirely independent and autonomous position with the Gestapo. The preparation and carrying out of the order to murder the Jews was kept strictly secret. Only a few persons knew the order to its full extent. Even the members of Eichmann's office were left ignorant on the order and learned of it only gradually. The evacuation and the transfer into the extermination camps was carried through by Eichmann's Sonderkommandos. They were composed of native police, almost exclusively regular police. The police were not permitted to enter the camps but were replaced immediatly upon arrival at the railroad station of the point of destination. In the camps themselves the circle of persons carrying out the murder orders was kept small. Everything was done to conceal the crimes.

This description based essentially on the evidence of the witnesses Knochen, Wisliceny and Dr. Hoffmann is supplemented in a surprising fashion by the evidence of Dr. Morgen. He declared that three persons were charged with the extermination of the Jews.

H2716 - 0040

Wirth, the former criminal commissioner of the Criminal Police in Stuttgart, known as "Murder Commissioner for terroristic investigation methods," had for his special task his headquarters together with his staff in Hitler's Chancelory . His task was at first the mass extermination of insane persons in Germany, then, secondly, the extermination of Jews in the Eastern countries. The Commando which was set up by Wirth himself for the purpose of extermination of Jews was known as "Aktion Reinhard", and was extremely small. Before the beginning of the action Himmler personally took the oath of the members, and declared explicitly that anyone who said anything about the action would be put to death. This Commando Reinhard stood outside any police office. It did not belong to the Gestapo, and wore a uniform and had credentials of the Security Police, only in order to allow members of this Commando free circulation in the rear of armed forces. This Commando started its activities with the extermination of Jews in Poland, and extended later on its diabolic work to further work within the Eastern territories, by setting up of special extermination camps in inconspicuous places. By a hitherto unknown camouflage system these camps were run by Jews themselves. The fact must be stressed that it was the Security Police of Lublin, which reported to the RKPA Wirth's misdeeds, and thus enabling the discovery of these hideous crimes. This fact corrects the testimony of Hoess, who declared that the extermination camps of Maidanek and Treblinka had been under the orders of the Security Police. In fact, they were under Wirth.

According to Dr. Morgen's testimony, Auschwitz was made a center of mass extermination of Jews by Hoess at a later date. He is said to have been called an unworthy pupil by Wirth because of his methods.

..ccording to Dr. Morgen's testimony, the organization Eichmann , was separated from these two Kommandos. That task consisted of deporting of European Jews to the concentration camps. According to witness Wisliceny, Eichmann had personally full powers and was personally responsible for the carrying out of the extermination order. He established special Kommandos in the occupied countries. Though economically under the Chief of Security Police, they could not receive any instruction or order from them.

Both organizations, Eichmann and Wirth, were amalgamated but this was done in such a way that only very few people of Eichmann's surroundings knew about it. In this way and furthermore by the use of Jewish collaborators, the knowledge of these killings was restricted to very few Germans, and thus the secret maintained.

The declarations of witnesses and affidavits might diverge as to the details in the organization of the extermination program, but one thing is clear beyond any doubt; the Gestapo as a whole did not participate in this horrible mass murder and with very few exceptions, could and did not know anything about it. The few leading persons who knew about it, Eichmann, Mueller, Himmler, for instance, kept strictest silence about their tasks and intentions, and in death, they took their secret with them. This is confirmed most clearly by Dr. Morgen's testimony. For how could the limitation of knowledge to the above-mentioned group of persons be made more evident than by the fact that the criminal police itself started investigations and discovered the crimes and that even the Chief of the Security Police and Nebe were astonished, while Mueller seemed to have been infrmed, as his behavior indicated.

H2716 - 0041

H2716 - 0042

by the exploitation of the traditional duty of obedience, have been used for measures by the highest governmental posts which went beyond the actual aims of the Gestapo. Thereby it is of decisive importance that only a small part of Gestapo officials participated in these tasks alien to police duties.

Since the most serious accusations against the Gestapo refer to its

H2716 - 0043

activity in the occupied territories, it follows that only a comparatively small percentage, at most 15% of the executive agents, but not the Gestapo as a whole, can be charged with it.

For this question, according to the generally correct opinion, it is of special importance whether the aims, tasks and methods of the organization or group were public knowledge. The publication, or, in other words, general knowledge, must include two things: knowledge of the objective fact of the criminal action and knowledge of the illegal, criminal character. The judgment of whether this knowledge existed in both senses has to be based on sound human understanding. It is to be assumed, even if individual members of the organization did not learn anything of the criminal incidents.

I may make a few fundamental additions to what I have already said about the individual crimes.

The reason why the Gestapo as a whole had no knowledge of the capital crimes committed lies in the following: Hitler from the beginning knew how to surround himself with a veil of secrecy, to conceal his true intentions, to see to it that no minister and no department and no official learned too much about any other. The well-known Fuehrer Order No.1 which was submitted as Gestapo Exhibit No.25 is only the actual realization of a long-established practice.

In view of the demonical influence which emanated from Hitler, in view of the feeling of inviolability of all his orders, which can be explained only through the demonical aspect of his character, and in view of the fear of the serious consequences to life and limb in the event of failure to carry out a so-called Fuehrer Order, was it to be wondered at

H2716 - 0044

that precisely this secrecy order was scrupulously observed?

So it is really not incredible that almost all defendants and witnesses examined here have actually just learned of all these heinous crimes. It is significant that the driver of a special vehicle was condemned to death by the SS- and Police Court in Minsk because in an intoxicated condition he had spoken about the purpose of the vehicle against his orders. Even a Dr. Giesevius had to admit that Heydrich endeavored to keep his actions secr , and the defendant Jodl characterized the system of secrecy in the most striking manner, with the words that the secrecy had been a masterpiece of Hitler's art of concealment, and a masterpiece of deception by Himmler.

It is a recognized legal principle that ignorance through one's own neglect is not sufficient in crimes; therefore it is necessary, in order to declare an organization criminal, that the members of this organization actually knew of and approved of the criminal aims or methods. But that cannot be proved in our case, and cannot be assumed according to all the facts established during the trial, no matter how strange the contrary assumption may seem to a person looking backward today, who cannot appreciate conditions in Germany.

In the question of whether the terrible crimes which were actually committed are to be ascribed to the Gestapo as a whole, the further fact must not remain unconsidered that the members of this commission did not act on their own initiative but on orders.

Those concerned contend, and can prove by witnesses, that if they had refused to carry out orders, they would have been threatened not only with disciplinary proceedings, loss of civil service rights

H2716 - 0045

and so forth, but also with concentration camp, and, on war assignments, with court-martial and execution. Do they thereby invoke a reason for clearing them of guilt?

This question is to be examined with a view to the so-called state of occupational emergency. The state of occupational emergency is not a category of written law. Rather it represents a concept which cannot be dispensed with in legal life. Where written law is not adequate, as when a state of emergency exists, sensible and practical considerations must fill up the gap. Public opinion approves this, and judgment of law and jurisprudence have recognized the so-called extra-legal state of emergency as a reason for absolving from guilt. It is true: Cowardice is not a virtue; but it is equally true that heroism and martyrdom in the world of human beings are the exception. Should the Gestapo members form this exception? Could one, from a purely human point of view, really expect them to take upon themselves loss of livelihood, family suffering, concentration camp, and perhaps even a disgraceful death? Besides, the resistance movements in the occupied territories, in their killing of members of the German occupation, repeatedly referred to the orders of their superiors and to the state of emergency of the terrorists under these orders.

Therefore, in our case as well, I should unhesitatingly like to consider that there was actual danger for life and limb of the perpetrator in the sense of Paragraph 54 of the German Penal Code. Here there existed was Justice Jackson called "physical compulsion".

Moreover, in Germany every official was and is trained in the conception of the strictest obedience to orders and instructions from higher authority. Perhaps as nowhere else in the world the official in Germany is filled with thought of authority. He was trained in the attitude, correct in itself, that a state dissolves if the orders issued by it are no longer followed, and that the logical result of the denial of state authority is anarchy.

H2716 - 0046

Added to this deep rooted attitude was the demoniac atmosphere which made particularly the little officials tools without will of their own. All of these motives were added to the threat emanating from the very nature of the job and they all together created an occupational emergency so depressing that they did not retain the freedom of decision to examine a criminal order as to its legal and moral evaluation, and to refuse obedience. Taking these conditions into account it hardly appears justifiable to attribute these proven crimes to the totality of the Gestapo so as to declare the Gestapo criminal.

The Prosecutors state - and this is just the very origin and aim of the indictment-that the crimes were not isolated acts committed independently from each other, but rather parts or aspects of a criminal policy, either as part of a common plan or as means of carrying out that common plan. The contention is that this very plan was directed toward the unloosening and conduct of an aggressive war, the aim of which originally was not definite but which was determined later. The aim of that war was the enslavement of Europe and the peoples of Europeto gain living space. Everything important that was carried on within that conspiracy characterized as such by the indictment is described as having had only one aim and purpose, to secure for the Nazi state a place in the sun and to push all external adversaries into the darkness. The very essence of the individual crimes was the intentional participation in the planning and carrying out of the plan. The crime of the individual consisted in his having joined the common plan of the conspiracy. It was claimed that plan and purpose of the conspiracy were universally known.

H2716 - 0047

Therefore, no one could claim that he was without knowledge of the conspiracy.

These contentions of the indictment aim above all at the individual defendants but supposedly they are also valid for the indicted organizations. It is claimed that the role played by the Gestapo within the conspiracy consisted in aiding the Nazi conspirators by creating a police state, set up to break every resistance, to exterminate Jews and faithful Christians, as well as political undesirable ones, as the main terrorists of the resistance movement, furthermore, to enslave the employable inhabitants of foreign countries and to eliminate and suppress by cruelty and horror all of those who might resist German lust of conquest within the Reich or in the conquered territories.

In re-examining the individual crimes, whether they are to be considered as assistants to the crime of conspiracy against world peace, it will be recommendable to study the activity of the Gestapo before the war, and to examine its work during the war in regard to the individual characteristics. Without repeating myself unnecessarily I believe I can state that the tasks and methods of the Gestapo before the war were the expressions of State institutions existing in all civilized countries without the State cannot even exist; there existence means in no way an aggressive war or the planning of any other conspiracy against world peace. The individual Gestapo official filled his duty as he had learned as a civil servant. Equally, in the upper strata of the political police it is unlikely that another thought than that to guarantee peace and security within the State should have been present. One must not identify the knowledge and action of the Gestapo with those of Himmler and

H2716 - 0048

Heydrich, those men strange to the police. If those men acted only on the basis of political considerations their subordinates cannot be blamed for it. Taking into account the well-known system of secrecy, the individual Gestapo official and the overwhelming majority of all Gestapo members could not have the least knowledge that their work aimed at the preparation of an aggressive war and created the basis for it. I believe that every Gestapo official when hearing that contention or when facing the question about his knowledge of the attack on world peace would not even understand.

One can burden the members of the Gestapo with the responsibility for the crimes committed during the war only when those - apart from their general knowledge - were committed only with the knowledge of participating in a plan to bring to a victorious ending the aggressive war even by the employment of the most horrible means in conflict with international law. Such proof cannot be carried out successfully either. The first condition again would be that the Gestapo officials who participated in the crimes knew that the war which we waged was an aggressive one. Yet we all know that a propaganda masterfully carried even to the remotest hamlets, never talked in other terms than of a war forced upon us criminally, that Hitler himself always spoke of the war which the others desired, not we. Although it may been that some thinking people who had not entirely lost their sound judgment had their doubts and might have thought that our government was not free of guilt, yet in face of the greater probability of the opposite it might not be stated that this opinion or certainly filled all Gestapo members.

H2716 - 0049

The prosecution assumes, and quite unjustly, in my opinion, that every activity of the party - but, above all, its fight against the Jews individuals holding different political opinions and the churches — was derived from the intention and the plan to eliminate all tendencies which opposed the war of aggression which it proposed. The national socialist struggle against Jewry sprang from the doctrine of anti-semitism which had become a point of the Party program, a doctrine which saw an element destructive to the State in all Jews. Because this fight was not a moral one, the Christian churches protested against it with right. This way, in turn, the fight of the Party against the Church may be explained at least to a large extent, and the steps taken by the Party against those who held different political views - especially against the Communists - in all probability took place, first of all, in order to maintain and to protect the State; in any event, that was the way in which the German people and the Gestapo officials looked upon the state of tension. It did not occur to anyone to see [illegible] the source of a conspiracy against world peace.

On last point, however, and, perhaps, the most profound, must not be overlooked in this connection. The German soldier, the German officials, the German workingman, and every German knew that the war had placed us in a situation which meant a struggle to the death. The war in its gradual stages showed us with terrifying clarity that it was a question of " to be, or not to be".

Indeed, it would mean that you would mis-judge the soul of the German people if you wanted to overlook the fact that every decent German at this juncture felt himself obligated to do everything which was expected of him in order to save his country. And, when we judge the behavior of the German people and its political police, we must take these points of view into consideration in order to do them justice.

H2716 - 0050

V. L I M I T A T I O N S

The prosecution has expressed the fact that the court is in a position to establish a restriction in its decision on declaring the organizations collective - be it with reference to certain sub-groups, or be it with reference to time. The organizational structure, the variety of the groups of individuals active within the Gestapo , and the results of the evidence presented in reply to the assertions made by the prosecution concerning the criminal activities of the Gestapo, form the basis for a possible limitation - either of personnel or of time - which I should like to have taken into account should the High Tribunal arrive at a verdict of guilty.

The following groups of persons are doubtless, not to be imputed with a punishable participation in the crimes listed under Artide 6 of the Charter , for neither did they themselves commit crimes, nor did they intend to commit crimes or realize such intent, nor could they have had knowledge of criminal plans and activities and, in fact, did not have knowledge to that effect:

1) Administrative officials: I have already briefly sketched their competence and jurisdiction. Administrative office of the Secret State Police or from Amt IV of the RSHA, but rather from Amt I and II of the RSHA whose members do not fall within the charges raised against the Gestapo. The offices of the administrative offices, and the offices of the Executive officials were never situated next to each other. Administrative officials had no insight into the activities of Executive officials -- in part because of the fact of secrecy which has been mentioned many times and which was observed especially strictly in the Gestapo - in part because the Administrative officials were looked upon by the Executive officials as merely belonging to the Gestapo nominally, and were treated with marked reserve.

H2716 - 0051

The various designations of duties such as Police Inspector, for the administrative official of the Police, and criminal inspector of the executive, must be pointed out, to stress the fundamental difference between these two categories of officials.

If the prosecution argues that the activities of the executive were conditioned by the activities of the administrative officials, this argument is as invalid as if I said that the activities of the officials of the Reich Finance Ministry which secured the funds for the salary and other expenses of the Gestapo had been the cause of the activities of the executive officials.

2) Employees and wage-earners. Chief Justice Jackson, in his speech of the 1 March 1946 excepted two groups of persons from the indictment against the organizations. First, the SA Reserve, and then the office employees, stenographers, and general laborers, of the Gestapo. A part of the groups of persons, which I have dealt with, being excepted from the indictment, I deem it nevertheless my duty to point out that this group of persons, because of their subordinate positions, and the resulting impossibility of acquiring detailed knowledge of the Gestapo's activities, has been very justly excepted from the indictment. It is my opinion that all employees and wage-earners which include for instance, drivers, as far as they were not officials, teletypists, telephonists, draftsmen, interpreters, are to be included in this exceptional group, no matter whether member-ship in the Gestapo was on the basis of a free labor contract, or whether the direction of the labor office permitted the selection of a different work place.

H2716 - 0052

3) The witness Hedel has made detailed statements with reference to the activities of the personnel dealing with technical informational work. They show clearly that they had nothing at all to do with executive work that they were not in a position to have any knowledge about the activity of the executive personnel, and that on the basis of their own activities they did not have to realize that they belonged to an organization whose activity might be criminal. An exceptional treatment too is justified with reference to this circle of persons.

4) The same applies to groups of persons who in the years 1942 to 1945 on the basis of superior orders were collectively transferred into the secret state police. They are the 51 groups of the secret field police and the military intelligence service including foreign censorship and teletype censorship offices who were subordinated to the Gestapo by the Wehrmacht, the border protection department, and the Reich Ministry of Finance. Even with reference to these groups there cannot be the slightest doubt that neither the fact of voluntary membership nor the knowledge of criminal aims as alleged by the Prosecution nor the fact of an inclusion applies to them. The individual person no matter what rank or office he held was powerless when he was collectively transferred on the basis of an order which emanated from the highest offices of the Wehrmacht and the state. Disobedience of this order would have been punished by death because of desertion or military disobedience.

5) There still remains the group of the executive officials. The executive officials originated basically from the personnel of the political departments of the police president's offices prior to 1933. These officials who party even before 1914 and currently up to the year 1933 were combatting the various interior political enemies of the various

H2716 - 0053

governmental systems and the governments which came into power were almost without exception absorbed into the political police of the new regime. Only those officials were excepted who had been particularly active as opponents of National-Socialism. But even these were dismissed only in rare cases. For the most part they were transferred to the criminal police. The filling of personnel for the secret state police was carried through in a manner where officials and candidates were transferred into the Gestapo from other police departments without previously being consulted except, of course, when they themselves made an application to that effect. In the same manner, officials of the protective police with a long and efficient record were transferred into the criminal or state police after nine years of service if they wanted to remain in the police service. They were unable to use any personal influence in being transferred to any other department.

With reference to the defense and the border police, I can establish that the members of these groups of persons who were included as officials of the executive of the secret state police could have nothing whatsoever to do with the crimes of which the Prosecution is accusing the Gestapo. The defense police exercised police activities as they belonged in the same way in every civilized state to the most noble tasks of the police or their affiliated institutions. It is clearly established through the testimony of Best and through Gestapo affidavits 39, 56, and 89 that the defense police had a very considerable amount of personnel, and in view of the particular duty of secrecy in the interest of the defense of the country, a transfer into other departments of the Gestapo or other police branches was not as a rule permissible. The defense police was mostly isolated within the Stapo offices which excluded official contact with other departments. The cases handled by the defense police were always submitted to the regular courts for decision.

H2716 - 0054

The function of the Border Police from 1933 to 1935 was the same as in the preceding period and the same as carried out today by the officers of the new border police. The officers of the border police did not carry out third degree interrogations, nor did they submit applications for referrals to a concentration camp, nor did they, who in the majority had served for a long time in the border police, participate in any persecution of Jews, nor could they, due to the special character of their use, participate in any other crime with which the Gestapo is charged.

These two groups of the Gestapo numbered five to six thousand men. On the basis of the figures which I have previously submitted for the strength of the various groups of the Gestapo, I arrive for the period of its largest personnel at a maximum figure of 75,000. The executive officials with a strength of approximately 15,000 men therefore constituted merely a portion of 20% of the total strength. If one deducts from that the 5 to 6 thousand men of the defense and border police, there remain 9 to 10 thousand men of the executive which equals 12 or 13 per cent of the total strength.

I believe I have already given the reasons why the Gestapo as a subordinate part of the State organism cannot be sentenced at all, for reasons which are based both on natural and as the common state law of all peoples. But even if those legal objections did not exist, a sentencing could not take place since the characteristics for criminality as Chief Justice Jackson outlined them on 28 February, 1946, are not given in the case of the Gestapo. And even if these arguments were not valid, I ask: Is it possible that an organization as such should be declared criminal simply because part of its members possibly can be held responsible for the committing of crimes, -- including even those members who certainly did not act in a criminal manner and had no knowledge of criminal deeds?

H2716 - 0055

I refer to the summary of affidavits given by a large number of the former members of the Gestapo presently in internment camps. I also would not wish to overlook drawing your attention to the numerous acts proven by those affidavits which aimed at the sabotaging of certain evil orders issued by the Head of the State.

When turning now to an argument covering all possible eventualities as it and dwelling on the question of time limitations, I may be much briefer.

One cannot speak at all of a uniform leadership of the Gestapo in the entire territory of the Reich and of a uniform direction of its will at least up to the appointment of Himmler as Deputy Chief of the Prussian Secret State Police, that is up to spring of 1934. With a short interruption Ministerialrat Diels had been active in Prussia as substitute head of the Secret State Police under Goering. It is impossible to construe a connection between Diels and the illegal tendencies as they became apparent after the outbreak of the National Socialist Revolution. I may refrain and I have to, due to the pressure of time from pointing out the real guilty ones in those excesses, Compare Affidavit Number 41.

As a state institution the Gestapo had no part in the events of June 30, 1934. In the following period of time, up to 9 November, 1938, the Gestapo did not play any role which would justify the charge of criminality. The arrest of 20,000 Jews on 10 November, 1938, which the Gestapo was ordered to carry out

H2716 - 0056

was, as Best testified, a matter foreign to the Police. Thus it is impossible to fix that date as the beginning of the criminal activity of the Gestapo. It must be stated that at least up to the beginning of the war the criminal character of the Gestapo cannot be proved.

Does that basis of judgment change for the duration of the war ? I stated already that the activity of the Einsatzgruppen and of the Sipo offices in the occupied territories cannot be charged to the Gestapo since both the leadership, the organization, the personnel, and the order of command of those offices would not permit a charging of responsibility to the Gestapo.

There is no doubt at all that if the Gestapo should be sentenced, considerable time limitations have to be made. I have sketched in a few lines how unsurmountable would be the difficulties existing for a time limitation.

And by this, High Tribunal, I should like to complete my remarks concerning the indictment of the Gestapo. I did not consider my task to excuse crimes and evil deeds and to whitewash those who disregarded the laws of humanity. But I desire to save those who are innocent, I desire to free the road for a sentence which will dethrone the demoniac powers and which will reconstitute the moral order of the world.

When glancing through the annals of European history throughout the last decades and centuries we read again and again that force conquered justice among the nations and that the spirit of revenge beclouded the thinking of humanity.

H2716 - 0057

A peace which was concluded remaind merely written; it was not accepted into the hearts of the people. Pacts were made ceremoniously only to be broken. Promis were given and not kept. We read in this book of revolutions of peoples, of economical need, of unspeakable sorrow. The last pages of this book, however, are written with blood, with/the blood of millions of innocent people. They speak of unimaginable cruelties, of limitless disregard, of holy human laws, and of mass murders which caused suffering to the peoples of Europe. In this book, Gentlemen of the High Tribunal, with your judgment, you are writing the last chapter, a chapter which is to be the end and the beginning - and because it draws the fina line under the gruesome battle of demonical powers against the moral order of the world, and beginning because it is to lead into a new world of liberty and justice.

This justice, I hope, will be the soul of the judgment as it is engraved with golden letters on the floor of the Palace in the Hague; Sol justitiae illustra no Do not, therefore, make your judgment applying only the cold logic of your learne mind, but also applying the kind love of a seeing heart. This applies especially to the judgment against the organizations; for a condemning judgment must be unjust, since among the millions whom it affects there are also millions who are guiltless. They would all become victims of desperation; they would all be despis and damned, and would perhaps even doom those happy who are now resting in their graves as victims of National Socialism.

The present world needs peace, nothing but peace..To extend the consequences of a judgment to a large, guiltless part of the German people would be working against world peace, which, in any event, is resting on an unfirm basi and would thereby repeat Hitler's idea to punish a people, the Jewish people, collectively and to exterminate them mutatis mutandis.

H2716 -0058

Out of this injustice against the laws of God and of Nature arose the indignation of the creature thus tortured - and the right to have the evil-doers called to account. Hitler and his regime proved the words, "Hodie mihi, cras tibi."

From the history of the Jews in the Old Testament we know that God would not have destroyed the City of Sodom if but one just man had lived there. Isn't God's truth contained in these words -- that a group may not be punished even if but one member of the group deserves no punishment?

Then, members of the High Tribunal, place your signatures under a verdict which will stand up before History and the Court of the World! Place your signatures under a verdict which will be praised as the beginning of a new Era of Justice and of Peace -- and which will be a bridge of gold leading to a better and a happier future.

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H-2716

Closing Speech - Gestapo

English

H2716 - 0059